Supreme Court, U.S.
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No. 80 - 5677

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ORIGINAL COPY

DAVID WENDELL RUGGLES,

Petitioner,

- against -

STATE OF CALIFORNIA,

Respondent.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR CERTIORARI

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TO: THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT

Petitioner, DAVID WENDELL RUGGLES, filed a motion for leave to proceed in forma pauperis and a petition for certiorari on November 6, 1980. This supplemental memorandum is respectfully submitted in support of the petition for certiorari.

Since the Supreme Court announced its decision in Arkansas v. Sanders, 442 U.S. 753 (1979), federal and state courts throughout the country have attempted to apply the rationale of that decision in a variety of fact situations and with a varying degree of success. An extensive index of published decisions interpreting Sanders follows indicating the pertinent facts of each case and the conclusion of each court as to the admissibility of evidence discovered as the result of a warrantless search.

Most of the decisions have concentrated attention upon whether the defendant had a reasonable expectation of privacy in the parcel subjected to a search, rather than upon whether law enforcement officers had gained exclusive control over the parcel. As a result, application of the Sanders rationale has been inconsistent and often confusing.

Because the instant case presents facts remarkably similar to those involved in Sanders, the Court is presented with a unique opportunity to clarify its earlier decision. Appellant suggests that greater emphasis placed upon whether law enforcement officers have exclusive control of a parcel would lead to more consistent application of the principles of the Fourth Amendment embodied in Sanders.

FEDERAL COURTS

DISTRICT OF COLUMBIA CIRCUIT:

- United States v. Harris, 627 F.2d 474 (D.C. Cir. 1980)(conviction vacated on another issue)

FIRST CIRCUIT:

- United States v. Dall, 608 F.2d 910 (1st Cir. 1979) (pickup truck, evidence admitted, Sanders distinguished -- inventory search)

SECOND CIRCUIT:

- United States v. Dien, 609 F.2d 1038 (2d Cir. 1979), Aff'd on rehearing 615 F.2d 10 (2d Cir. 1980) (cartons in van -- suppressed)
- United States v. Ocampo, 492 F. Supp. 1211 (E.D.N.Y. 1980)(car trunk; taped cardboard box -- suppress, open flight bag and plastic shopping bag partially covered by shirt -- admit)

- United States v. Mannino, 487 F. Supp. 508 (S.D.N.Y. 1980) (sealed boxes - suppress; closed but unsealed boxes and white plastic bag - admit), aff'd, __ F.2d __ (2d Cir 1980)
- United States v. Markland, 489 F. Supp. 932 (D. Conn. 1980) (zippered opaque plastic bag thrown from car by traffic accident - suppress)

THIRD CIRCUIT:

- Milhollan v. United States, 599 F.2d 518 (3d Cir.), cert. denied, 444 U.S. 909 (1979) (Brennan, Marshall, & Powell, J.J., dissenting) (satchel in impounded car -- Sanders distinguished - evidence admitted)

FOURTH CIRCUIT:

- United States v. Presler, 610 F.2d 1206 (4th Cir. 1979) (plastic box and locked briefcase left with friend without key - suppress)

FIFTH CIRCUIT:

- United States v. Rigales, 630 F.2d 364 (5th Cir. 1980) (zippered case in car - suppress)
- United States v. Forrest, 620 F.2d 446 (5th Cir. 1980) (Sanders distinguished -- trailer of semi rig same as automobile; exigent circumstances)
- United States v. Bella, 605 F.2d 160 (5th Cir. 1979) (guitar case and luggage in car - suppress)
- United States v. Miller, 608 F.2d 1089 (5th Cir. 1979) (plastic portfolio behind driver's seat - suppress)-- cert. denied, 100 S. Ct. 3020 (1980)
- United States v. Morris, 491 F. Supp. 222 (S.D. Ga. 1980) (Sanders distinguished -- if proper search warrant for search of home, no additional warrant needed to search jewelry box found therein)

SIXTH CIRCUIT:

- United States v. Calandra, 605 F.2d 236 (6th Cir. 1979) (Chadwick held not retroactive; hand carried briefcase)
- United States v. Rivers, 486 F. Supp. 1025 (N.D. Tex. 1980) (heavy plastic garbage bags in vehicle - suppress)
- United States v. Hartman, 627 F.2d 7 (6th Cir. 1980) (suitcase in car - suppress)

SEVENTH CIRCUIT:

- United States v. Garcia, 605 F.2d 349 (7th Cir. 1979), cert. denied, 100 S. Ct. 2966 (1980) (Sanders distinguished -- hand carried luggage, incident to arrest - admit)
- United States v. Bulgier, 618 F.2d 472 (7th Cir. 1980) (Sanders distinguished -- private search of package by airline in course of normal procedures followed by controlled delivery - admit)
- United States v. White, 607 F.2d 203 (7th Cir. 1979) (attache case in car -- evidence supported possibility that gun had been thrown from car; immediate search of briefcase deemed necessary to determine whether more extensive search for gun along road might be necessary to safeguard public - admit)

NINTH CIRCUIT:

- United States v. Mackey, 626 F.2d 684 (9th Cir. 1980) (paper bag under car seat - admit)
- United States v. MacKay, 606 F.2d 264 (9th Cir. 1979) (suitcase in car trunk - suppress)

- Moran v. Morris, 478 F. Supp. 145 (C.D. Cal. 1979) (briefcase in shed - suppress (dicta))
- United States v. Passaro, 624 F.2d 938 (9th Cir. 1980) (Sanders distinguished -- wallet taken from person at time of arrest - admit)

TENTH CIRCUIT:

- United States v. Kralik, 611 F.2d 343 (10th Cir. 1979) (Sanders distinguished -- no additional warrant necessary to search suitcase found in car searched pursuant to valid warrant)
- United States v. Andrews, 618 F.2d 646 (10th Cir. 1980) (Sanders distinguished -- sealed package searched by airline personnel followed by controlled delivery - admit)
- United States v. Rengifo-Castro, 620 F.2d 230 (10th Cir. 1980) (suitcase in car - suppress)
- United States v. Meier, 602 F.2d 253 (10th Cir. 1979) (backpack in car - suppress)
- United States v. Gooch, 603 F.2d 122 (10th Cir. 1979) (briefcase aboard aircraft - suppress (dicta))

STATE COURTS

ALABAMA:

- Reid v. State, 388 So. 2d 208 (Ala. 1980) (toolbox affixed to body of pickup truck not otherwise immobilized - admit)

ARIZONA:

- State v. Crutchfield, 123 Ariz. 570, 601 P.2d 333 (1979) (Chadwick case -- suitcase in possession of defendant at airport - suppress)

ARKANSAS:

- Moore v. State, 594 S.W.2d 245 (Ark. 1980) (shaving kit in car - suppress)
- Daigger v. State, 595 S.W.2d 653 (Ark. 1980) (purse between two front seats of car - admit)

CALIFORNIA:

- People v. Yuna, 80 Daily Journal D.A.R. 3186 (C.A. 1st, Nov. 26, 1980) (jacket on back seat of car - suppress)
- California v. Robbins, 103 Cal. App. 3d 34, 162 Cal. Rptr. 780 (1980) (green plastic-wrapped blocks in car -- Sanders distinguished - readily identifiable by trained officers as marijuana - admit); petition for cert. filed, July 29, 1980 (80-148)
- California v. Musante, 102 Cal. App. 3d 156, 162 Cal. Rptr. 158, cert. denied, 49 U.S.L.W. 3282 (No. 79-1909, Oct. 21, 1980) (closed electric blanket box on back seat of stolen vehicle - suppress)
- People v. Rodriguez, 102 Cal. App. 3d 510, 162 Cal. Rptr. 535 (1980), hearing granted June 19, 1980 (Cal. Sup. Ct.) (car trunk - suppress (Sanders dicta)
- People v. Gott, 160 Cal. Rptr. 307 (1979) (car trunk - suppress (dicta))
- People v. Haynes, 106 Cal. App. 3d 413, 165 Cal. Rptr. 138 (1980) (Sanders distinguished -- car trunk, exigent circumstances - admit)
- California v. Dalton, 24 Cal. 3d 850, 598 P.2d 467, 157 Cal. Rptr. 497, cert.denied, 445 U.S. 946 (1980) (metal boxes in car trunk - suppress)

- People v. Bullwinkle, 105 Cal. App. 3d 82, 164 Cal. Rptr. 163 (1980) (Sanders distinguished -- purse in possession of defendant; booking type search - admit)
- Bell v. Superior Court, 101 Cal. App. 3d 238, 161 Cal. Rptr. 455(1980) (athletic bag on floor behind driver's seat - suppress)
- People v. Flores, 100 Cal. App. 3d 221, 160 Cal. Rptr. 839 (1980) (Sanders distinguished -- shoulderbag at defendant's feet, exigent circumstances)
- People v. Diaz, 101 Cal. App. 3d 440, 161 Cal. Rptr. 645 (1980) (soft drink cup in car - admit)
- People v. Harris, 105 Cal. App. 3d 204, 164 Cal. Rptr. 296 (1980) (Sanders distinguished -- purse in defendant's possession - admit)
- People v. Chavers, 105 Cal. App. 3d 505, 164 Cal. Rptr. 449 (1980) (bag in glove compartment - suppress)
- People v. Jenkins, 106 Cal. App. 3d 731, 165 Cal. Rptr. 361 (1980) (blue balloon in house - admit -- Sanders distinguished; no expectation of privacy)
- People v. Fick, 107 Cal. App. 3d 892, 166 Cal. Rptr. 106 (1980) (grocery bag on front seat - admit)
- People v. Sims, 109 Cal. App. 3d 900, 167 Cal. Rptr. 506 (1980) (closed briefcase in car - suppress)
- People v. George, 110 Cal. App. 3d 528, 168 Cal. Rptr. 44 (1980) (vest on front seat - suppress)
- People v. Brown, ___ Cal. App. 3d ___, 168 Cal. Rptr. 806 (1980) (plastic bag - admit -- Sanders distinguished; contents discernable)

- People v. Scott, 95 Cal. App. 3d Supp. 8, 158 Cal. Rptr. 220 (1980) (cigarette box emitting odor of ether in car - admit)
- People v. Riegler, ___ Cal. App. 3d ___, 168 Cal. Rptr. 816 (1980) (wrapped and sealed packages searched by customs, followed by controlled delivery with warrant; warrant did not extend to car where package found - suppress)
- People v. Bundesen, 106 Cal. App. 3d 508, 165 Cal. Rptr. 174 (1980) (wallet taken from person - admit -- Sanders distinguished; booking search)

COLORADO:

- People v. Little, 598 P.2d 140 (Colo. 1979) (zippered travel bag in apartment - suppress)

DISTRICT OF COLUMBIA:

- In the Matter of B.K.C., 413 A.2d 894 (U.S. App. D.C. 1980) (briefcase in possession of companion - suppress (dicta))

FLORIDA:

- State v. Howell, 384 So. 2d 60 (Fla. Dist Ct. App. 1980) (briefcase in trunk - suppress)
- Cobb v. State, 378 So. 2d 82 (Fla. Dist Ct. App. 1979) (briefcase on rear floorboard - suppress)
- Ulesky v. State, 374 So. 2d 121 (Fla. Dist. Ct. App. 1979) (purse in vehicle - suppress)
- Haugland v. State, 374 So. 2d 1026 (Fla. Dist Ct. App. 1979) (luggage in trunk - suppress)
- Liles v. State, 375 So. 2d 1094 (Fla. Dist. Ct. App. 1979) (partially open satchel on front seat - suppress) (Cert. dismissed, 383 So. 2d 1203 (1980))

- Shafi v. State, 377 So. 2d 787 (Fla. Dist. Ct. App. 1979) (luggage in car - suppress)
- Sower v. State, 282 So. 2d 1257 (Fla. Dist. Ct. App. 1980) (lockers in trucks - suppress)

GEORGIA:

- Buday v. State, 150 Ga. App. 686, 258 S.E.2d 318 (1979) (luggage in trunk - suppress)
- Fears v. State, 152 Ga. App. 817, 264 S.E.2d 284 (1980) (tote bag left at sister's house and searched with her consent - admit)
- Gaston v. State, 270 S.E.2d 877 (Ga. App. 1980) (blue bag removed from car by defendant after accident and handed to bystander - suppress)

HAWAII:

- State v. Rosborough, 615 P.2d 84 (Haw. 1980) (footlocker at airport; matchbox on person - suppress)

ILLINOIS:

- People v. DeRusha, 74 Ill. App. 3d 641, 393 N.E.2d 619 (1979) (luggage in car - admit -- Sanders distinguished; car not immobilized)
- People v. Bayles, 76 Ill. App. 3d 843, 395 N.E.2d 663 (1979) (suitcase on ground near overturned car - suppress)
- People v. Rinaldo, 80 Ill. App. 3d 433, 399 N.E.2d 1027 (1980) (box in back of car - suppress)
- People v. Boyd, 41 Ill. Dec. 484, 407 N.E.2d 982 (1980) (cardboard box; defendant grabbed box from front seat while companion being arrested and locked it in trunk - suppress)

INDIANA:

- Bradford v. State, 401 N.E.2d 77 (Ind. App.1980) (purse in car - suppress)

IOWA:

- State v. Schrier, 283 N.W.2d 338 (Iowa 1979)(knapsack on floorboard near driver, contraband protruding - admit)

MAINE:

- State v. Blais, 416 A.2d 1253 (Me. 1980)(rolled up plastic bag in trunk - suppress)
- State v. Hassapelis, 404 A.2d 232 (Me. 1980)(gym bag on floor of vehicle - suppress, but harmless because merely cumulative)

MARYLAND:

- Pirner v. State, 45 Md. App. 50, 411 A.2d 135 (1980) (duffel bag under passenger seat - suppress)
- Manalansan v. State, 45 Md. App. 667, 415 A.2d 308 (1980)(bag on back seat - suppress)
- Liichow v. State, 419 A.2d 1041 (Md. 1980)(opaque plastic bag being carried from trailer home - suppress)

MASSACHUSETTS:

- Commonwealth v. Moon, 394 N.E.2d 984 (Mass. App. 1979), aff'd, ___ Mass. ___, 405 N.E.2d 947 (1980)(wallet on front seat, defendant not present - suppress)

MINNESOTA:

- State v. Filipi, 297 N.W.2d 275 (Minn. 1980)(duffel bag in trunk - suppress)
- State v. Cavegn, 294 N.W.2d 717 (Minn. 1980)(brown paper bag held by defendant inside zippered jacket - admit -- Sanders distinguished; incident to arrest)

MISSOURI:

- State v. Oberg, 602 S.W.2d 948 (Mo. App. 1980) (sealed metal containers being unloaded from van - suppress)

NEW JERSEY:

- State v. Hayburn, 171 N.J. Supre. 390, 409 A.2d 802 (1979)(car trunk - suppress)
- State v. Kahlon, 172 N.J. Super. 331, 411 A.2d 1178 (1980)(box in trunk - admit -- Sanders not retroactive; exigent circumstances present)
- State v. Pace, 171 N.J. Super. 240, 408 A.2d 808 (1979)(attache case in car trunk - suppress)
- Goings v. New Jersey, cert.denied, 49 U.S.L.W. 3220 (U.S. Oct. 7, 1980)(No. 79-1860)(from Appellate Division Superior Court)(shoulder bag impounded after defendant had opportunity to remove its contents - admit)
- Epp v. New Jersey, cert. denied, 49 U.S.L.W. 3221 (U.S. Oct. 7, 1980)(No. 79-1861)(from Appellate Division Superior Court)(luggage in car - admit -- Sanders not retroactive)
- Kaufman v. New Jersey, cert.denied, 49 U.S.L.W. 3265 (U.S. Oct. 14, 1980)(No. 80-216)(from Appellate Division Superior Court)(luggage in car - admit -- Sanders not retroactive)
- Hatami v. New Jersey, petition for certification denied mem., 82 N.J. 295, 412 A.2d 801 (1980), cert. denied, 49 U.S.L.W. 3421 (U.S. Dec. 9, 1980)(No. 80-562)(gym bag in car - admit --Sanders not retroactive)

NEW MEXICO:

- State v. Bramlett, 94 N.M. 263, 609 P.2d 345 (1980) (duffel bag and lunch box in car trunk - suppress)
- State v. Walker, 93 N.M. 769, 605 P.2d 1168 (1980) (suitcase in van - suppress)
- State v. Luna, 93 N.M. 773, 606 P.2d 183 (1980) (car search invalid but harmless under circumstances)

NEW YORK:

- People v. Spencer, 74 A.D.2d 77, 426 N.Y.S.2d 605 (1980) (sealed cardboard box in car trunk - suppress)
- People v. Belton, 50 N.Y.2d 447, 407 N.E.2d 420, 429 N.Y.S.2d 574 (1980) (zippered pockets of jacket on back seat - suppress), pet. for cert. filed, 49 U.S.L.W. 3292 (U.S. Sept. 2, 1980) (No. 80-328)
- People v. Howard, 50 N.Y.2d 583, 408 N.E.2d 908, 430 N.Y.S.2d 578 (1980) (vanity case thrown by running defendant - suppress), cert. denied, 49 U.S.L.W. 3403 (U.S. Dec. 2, 1980) (No. 80-543)

NORTH CAROLINA:

- State v. Gauldin, 44 N.C. App. 19, 259 S.E.2d 779 (1979), pet. for rehearing denied, 265 S.E.2d 399 (1980) (suitcase in back of car - suppress)
- State v. Cole, 46 N.C. App. 593, 265 S.E.2d 507 (1980) (large winter jacket stuffed with other clothing in car trunk - suppress)

OREGON:

- State v. Burns, 43 Or. App. 937, 607 P.2d 735 (1979) (wallet on defendant's person - admit -- Sanders distinguished; incident to arrest)

- State v. DeLong, 43 Or. App. 183, 602 P.2d 665 (1979) (camera case in car trunk - suppress)

PENNSYLVANIA:

- Commonwealth v. Timko, 417 A.2d 620 (Pa. 1980) (zipperred valise in van - suppress)

RHODE ISLAND:

- State v. Burke, 415 A.2d 1314 (R.I. 1980) (per curiam, mem.) (luggage in car - suppress)

TEXAS:

- Nastu v. State, 589 S.W.2d 434 (Tex. Cr. App. 1979) (luggage in car - admit -- Sanders not retroactive)
- Araj v. State, 592 S.W.2d 603 (Tex. Cr. App. 1980) (attache case in back of car - suppress)

WASHINGTON:

- State v. Marcum, 24 Wash. App. 975, 601 P.2d 975 (1979) (athletic bag in trunk - suppress)
- State v. Grundy, 25 Wash. App. 411, 607 P.2d 1235 (1980) (footlocker next to car - suppress)

WEST VIRGINIA:

- State v. Tomey, 259 S.E.2d 16 (W. Va. 1979) (suitcase on back seat - suppress)

WISCONSIN:

- State v. Prober, 297 N.W.2d 1 (Wis. 1980) (purse in car trunk - suppress)

FEDERAL COURTS - SUPPLEMENT

- United States v. Benson, 631 F.2d 1336 (8th Cir. 1980) (unlocked tote bag on passenger seat - suppress)

Respectfully submitted,

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